

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

CSI AVIATION, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 1:20-cv-00281-SCY-JFR
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
_____	)	

**UNITED STATES' ANSWER AND COUNTERCLAIM**

The United States responds to the Plaintiff's Amended Complaint for Excise Tax Refund (the "Complaint") with the following Answer and Counterclaim.

**RESPONSE TO ALLEGATIONS**

The United States responds to the specifically numbered paragraphs of Plaintiff's Complaint as follows:

1. The United States admits the allegations in paragraph 1 but denies that the excise taxes and statutory additions were erroneously or illegally assessed against Plaintiff.
2. The United States admits the allegations contained in paragraph 2 of the Complaint.
3. The United States admits that the plaintiff exhausted its administrative remedies for the 2015 and 2016 periods, but the United States is presently without sufficient knowledge to form a belief as to the truth of the allegations regarding whether plaintiff exhausted its administrative remedies for the 2017 period.
- 4-7. The United States admits the allegations contained in paragraphs 4-7 of the

Complaint.

8. The United States denies the allegations contained in paragraph 8 of the Complaint.

9. The United States admits the allegations contained in the first two sentences of paragraph 9 of the Complaint. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in the last sentence of paragraph 9 of the Complaint.

10. The United States admits the allegations contained in paragraph 10 of the Complaint.

11. The United States admits that CSI Aviation remitted excise taxes imposed by § 4261(c) of the Internal Revenue Code with the Forms 720.

12-13. The United States admits the allegations contained in paragraphs 12-13 of the Complaint.

14. The United States admits the allegations contained in paragraph 14 of the Complaint, but avers that the amount assessed for the quarter ending June 30, 2015, should be \$803,815.64.

15-16. The United States admits the allegations contained in paragraphs 15-16 of the Complaint.

17. The United States admits the allegations contained in paragraph 17 of the Complaint, but avers that quick assessments were made since CSI Aviation, Inc. would not execute statute extensions.

18-19. The United States denies the allegations contained in paragraphs 18-19 of the Complaint.

20. The United States admits the allegations contained in paragraph 20 of the Complaint.

21. The United States denies the allegations contained in paragraph 21 of the Complaint.

22. The United States admits the allegations contained in paragraph 22 of the Complaint.

23. The United States incorporates the answers to paragraphs 1 through 22, as stated above in response to the allegations contained in paragraph 23.

24-26. The United States admits the allegations contained in paragraphs 24-26, but avers that the proper form number is Form 5385, not Form 5395.

27. The United States admits the allegations contained in paragraph 27 of the Complaint.

28. The United States denies the allegations contained in the first sentence of paragraph 28. The United States admits the allegations contained in the last sentence of paragraph 28.

29-30. The United States admits the allegations contained in paragraphs 29-30 of the Complaint.

31. The United States admits the allegations contained in the first two sentences of paragraph 31. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in the last sentence of paragraph 31 of the Complaint.

32-33. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 32-33 of the Complaint.

34. The United States denies the allegations contained in paragraph 34 of the Complaint.

35. The United States admits the allegations contained in paragraph 35 of the Complaint.

36-37. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 36-37 of the Complaint.

38-39. The United States admits the allegations contained in paragraphs 38-39 of the Complaint.

40-41. The United States denies the allegations contained in paragraphs 40-41 of the Complaint.

42. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 42 of the Complaint.

43. The United States incorporates the answers to paragraphs 1 through 42, as stated above in response to the allegations contained in paragraph 43.

44-46. The United States admits the allegations contained in paragraphs 44-46 of the Complaint.

47-53. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraphs 47-53 of the Complaint.

54. The United States admits that Notice CP297 was issued on May 11, 2020. The United States is presently without sufficient knowledge to form a belief as to the truth of the remaining allegations contained in paragraph 54 of the Complaint.

55. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 55 of the Complaint.

56-57. The United States denies the allegations contained in paragraphs 56-57 of the Complaint.

58. The United States is presently without sufficient knowledge to form a belief as to the truth of the allegations contained in paragraph 58 of the Complaint.

All other allegations not specifically admitted are denied.

**COUNTERCLAIM BY THE UNITED STATES OF AMERICA AGAINST CSI AVIATION, INC.**

The United States of America, pursuant to 26 U.S.C. §§ 7401 and 7402, at the direction of the Attorney General of the United States, or her delegate, and at the request of the Secretary of the Treasury, or his delegate, files this Counterclaim against CSI Aviation, Inc. and states as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 26 U.S.C. §§ 7401 and 7402 of the Code and 28 U.S.C. §§ 1340 and 1345.
2. Venue of this action properly lies in this district pursuant to 28 U.S.C. §§ 1391(b) and 1396.

**THE PARTIES**

3. Counterclaim plaintiff is the United States of America.
4. Counterclaim defendant is CSI Aviation, Inc., a corporation organized under the laws of New Mexico. It can be served through its counsel of record.

**THE TAX LIABILITY**

5. A duly-authorized delegate of the Secretary of the Treasury made timely assessments against, and gave notice and demand to CSI Aviation, Inc. for unpaid excise tax, penalties, statutory additions, and interest for the tax periods set forth on the table below:

<b>Tax Period Ending</b>	<b>Assessment Date</b>	<b>Assessment Type</b>	<b>Amount Assessed</b>	<b>Balance Due 11/30/2020</b>
03/31/2015	04/30/2015 06/11/2018 04/27/2018	Tax Additional Tax Additional Tax	\$374,801.99 \$227,809.26 \$1,095,209.35	\$2,021,569.97
06/31/2015	08/17/2015 04/27/2018 06/11/2018	Tax Additional Tax Additional Tax	\$435,659.42 \$803,815.64 \$189,572.34	\$1,559,183.03
09/30/2015	11/23/2015 04/27/2018 07/16/2018	Tax Additional Tax Penalty	\$395,305.31 \$909,300.59 \$10,911.61	\$1,138,514.20
12/31/2015	04/04/2016 04/27/2018 07/16/2018	Tax Additional Tax Penalty	\$437,046.39 \$1,251,470.31 \$15,017.64	\$1,557,974.23
03/31/2016	04/30/2016 04/27/2018 07/16/2018	Tax Additional Tax Penalty	\$429,193.05 \$939,181.00 \$11,270.17	\$1,158,949.19
06/30/2016	07/31/2016 04/27/2018 07/16/2018	Tax Additional Tax Penalty	\$342,472.12 \$1,442,609.16 \$15,983.64	\$1,632,007.22
09/30/2016	10/31/2016 04/27/2018 07/16/2018	Tax Additional Tax Penalty	\$452,475.89 \$1,344,257.76 \$14,449.30	\$1,463,265.71
12/31/2016	01/31/2017 04/27/2018 07/16/2018	Tax Additional Tax Penalty	\$518,439.13 \$2,029,017.71 \$20,141.55	\$2,022,337.98
03/31/2017	06/19/2017 02/17/2020	Tax Additional Tax	\$542,842.56 \$1,107,303.09	\$1,418,633.75
06/30/2017	08/21/2017 02/17/2020	Tax Additional Tax	\$432,522.10 \$1,068,696.30	\$1,352,853.62
09/30/2017	12/25/2017 02/17/2020	Tax Additional Tax	\$405,775.00 \$919,910.92	\$1,158,215.52
<b>Total</b>				<b>\$16,483,504.40</b>

6. Notice of and demand for payment of the assessments referred to above was mailed to CSI Aviation, Inc. on or about the date of the assessments. Despite such notice and demand for payment, CSI Aviation, Inc. has neglected, failed or refused to fully pay the above described tax liabilities. As of November 30, 2020, these liabilities had grown to \$16,483,504.40.

### **COUNT I**

#### **(Reduce Assessments to Judgment)**

7. Because the taxes described above in Paragraph 5 remain unpaid despite notice and demand for payment of the same, the United States is entitled to a judgment under 26 U.S.C. § 7402 that CSI Aviation, Inc. is indebted to the United States in the amount of \$16,483,504.40, plus additional prejudgment and post-judgment interest thereon from November 30, 2020, until paid, all pursuant to 28 U.S.C. § 1961(c)(1); 26 U.S.C. §§ 6601, 6621(a)(2) and 6622.

FOR THESE REASONS, the United States requests the Court to Order,

A. That CSI Aviation, Inc. is indebted to the United States in the amount of \$16,483,504.40, as of November 30, 2020, plus additional prejudgment and post-judgment interest thereon from November 30, 2020, until paid, all pursuant to 28 U.S.C. § 1961(c)(1); 26 U.S.C. §§ 6601, 6621(a)(2) and 6622.

B. That the United States has such further relief as this Court may deem just and proper, including its costs herein.

RICHARD E. ZUCKERMAN  
Principal Deputy Assistant Attorney General

MICHELLE C. JOHNS

/s/ Michelle C. Johns

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ATTORNEYS FOR UNITED STATES



**CERTIFICATE OF SERVICE**

IT IS HEREBY CERTIFIED that service of the foregoing Answer and Counterclaim has been made on November 9, 2020, by electronic notification to:

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Jessica M. Hernandez  
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/s/ Michelle C. Johns

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